Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications Services	)	CC Docket No. 98-146
Capability to All Americans in a Reasonable	)	
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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Introduction And Summary

The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments on the Notice of Inquiry into the deployment of advanced telecommunications capability ("NOI") pursuant to Section 706 of the 1996 Telecommunications Act ("1996 Act"). CIX is a trade association that represents over 150 Internet Service Providers who handle over 75% of the United States' Internet traffic.[1]

Internet service providers, including CIX members, continue to be at the forefront of efficient, innovative and market-based Internet services to the public. Today's Internet, still widely recognized as in its infancy, is growing at an unprecedented rate and will continue to

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[1] The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

evolve into tomorrow's information superhighway. CIX urges the Commission to implement Section 706 in a manner that is carefully measured to meet Congress' articulated, pro-competitive goals for local telecommunications and its stated policy of nonregulation of the Internet.

CIX encourages the Commission to act consistent with Section 706 which provides telecommunications carriers with incentives to deploy new capacity, and to add technologies to existing capacity, because such actions bolster the strength of the Internet. If regulatory relief can improve the ability of competitive providers (including CLECs and IXCs) to deploy such new telecommunications services, CIX believes it is appropriate for the Commission to consider such action in the context of the 1996 Act's established vehicles for deregulation and preemption – Section 10 and 253 of the Act.

Until a truly competitive local market exists, the Commission's mandates under Sections 706, 251, and 271 all lead to one concrete objective: open the incumbent local exchange carriers ("ILEC") networks so that local telecommunications for data services can flourish. Section 706 should be interpreted to work with the local competition provisions of the 1996 Act. At this point, all other regulatory actions in furtherance of advanced telecommunications capacity pale by comparison. Once the ILECs have met their obligations under the 1996 Act, and local markets are truly open for competition, only then should ILECs requests for deregulation be considered.

CIX also believes that, until ISPs and end-users have options around the ILEC local network, the American consumer would benefit from ILEC regulation ensuring ISP choice. ISP choice should take two directions. First, consumers should not be steered or forced to accept the ILEC-affiliated ISP by the ILEC's marketing practices. All ISPs should be treated equally in terms of telecommunications services, CPNI, and plans for ILEC network expansion. Second, the Commission should enforce existing ILEC statutory obligations to provide interconnection between local data networks and data competitive access services to end-user ISPs.

Finally, CIX recognizes that the promotion of advanced telecommunications capability ("ATC") can raise universal service fund issues. For example, the issue of advanced services to rural Americans is raised in Section 254 and resonates in the language of Section 706. CIX believes, that it is appropriate to consider such issues as universal service measures, and to resolve them through the process set forth in Section 254. After the local markets are subject to competition and alternative technologies are more widely deployed, the states and the Commission can better evaluate what if any USF funding is necessary, targeted, and keeps all markets, including rural markets, open for advanced telecommunications competition.

Discussion

I. The Meaning Of "Advanced Telecommunications Capability"

The NOI (at ¶¶ 13-17) asks how the statutory term "advanced telecommunications capability" should be interpreted. In CIX's view, the term focuses Section 706 matters to "telecommunications" which are truly advanced (i.e., higher bandwidth and/or higher speeds) relative to the existing services substantially available in the marketplace. Section 706 does not direct the Commission to consider regulatory intervention on Internet services and other information services. Further, what telecommunications services are truly "advanced" is a relative standard which will evolve over time, and depends on the context in which the service is offered.

A. The Purpose of Section 706 Is to Promote Telecommunications

Section 706 unambiguously directs the Commission to examine "telecommunications capabilities." The term is used to describe the Section 706(a) "general" mandate to take reasonable deregulatory action to "encourage deployment of advanced telecommunications

capability," and again in Section 706(b) as the subject of this Inquiry.[2] Significantly, Section 706 never uses the term "information service," and Congress chose not to employ the broader term of "advanced services."[3] In CIX's view, the statute directs the Commission to focus on "telecommunications" or "telecommunications services"[4] that may offer "advanced capability."

The focus of Section 706 on "telecommunications" offerings, and not "information services," must be given significant weight as the Commission explores the scope of the statute. The Commission has repeatedly explained that significant technical and policy distinctions exist between information services and telecommunications services; Commission regulation focuses properly with the latter and not the former.[5] Section 230 of the Communications Act further informs the proper interpretation of Section 706, as the 1996 Congress set the policy of the

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2 Further, the Section 706 title, "Advanced Telecommunications Incentives," evidences the Congressional focus on telecommunications and telecommunications services.

3 The term "advanced services" is used in Section 254(b)(2) and 254(h)(2) of the Act, where it is described as including both telecommunications and information services. When crafting the language of Section 706, it is significant that Congress chose the more limited term "telecommunications," and not the broader term, "advanced services."

4 Thus, CIX believes that the focus of this proceeding is toward pure transmission services, 47 U.S.C. 153 (43), whether offered on a private carrier basis (i.e., not "telecommunications service") or available to the public for a fee (and so meets the definition of "telecommunications service").

5 See Report to Congress, CC Docket No. 96-45, FCC No. 98-67, at ¶¶ 21-48 (rel. Apr. 10, 1998)("USF Report to Congress"); Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Dkt. No. 98-147, et al., FCC 98-188, at ¶¶ 35-37 (rel. Aug. 7, 1998)("Wireline Advanced Services Order & NPRM").

United States, and the Commission, " . . . to preserve the vibrant and competitive free market that presently exists for the Internet . . ., unfettered by Federal or State regulation."[6]

For these reasons CIX finds that some of the services suggested for Section 706 regulatory consideration at ¶16 of the NOI -- electronic programming, push technologies, and content such as web pages -- are not "telecommunications capabilities" and should not be the focus of regulatory action. If anything, these services are information services. Electronic Programming guides clearly are not a transmission service and therefore are not advanced telecommunications services; they are an example of "electronic publishing," which falls squarely in the definition of information services.[7] Likewise, Push technologies are information services. These technologies are client/server applications that allow information to be sent automatically to an end user after an initial setting of a computer program. By contrast, the primary form of communication on the World Wide Web is "pull" technology, where an end user through their Internet browser must request a Web page before it is sent. Push technologies, including broadcast media and e-mail, send information regardless of whether the end user requests it. Push technologies are used by companies and consumers to "generate . . . and mak[e] available" information, such as customized news.[8]

In sum, CIX urges the Commission to focus regulatory actions, if necessary, on the telecommunications market. Section 706 is not an appropriate vehicle for regulatory entry into the highly competitive Internet services markets.

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6 47 U.S.C. §230(b)(1) & (2).

7 47 U.S.C. § 153 (20).

8 USF Report to Congress, at ¶¶ 62-63.

B. Advanced Telecommunications Capabilities Must Be Defined in a Manner That Identifies Truly Innovative Next Generation Technologies.

Section 706(c)(1) of the 1996 Act defines "advanced telecommunications capabilities" as "high speed, switched, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics, and video telecommunications." The statutory definition also underscores that technology neutrality is a key objective: "advanced telecommunications capability" is defined "without regard to any transmission media or technology" and "using any technology." As discussed below, each of these aspects of the definition should be interpreted meaningfully, in a way that identifies innovators and provides incentives for them to commit to do more than the current technology.

1. Broadband, High Speed and High Quality

The telecommunications to be promoted under Section 706 must have "broadband . . . capabilities." CIX believes that a service is "broadband" if it permits the end user to send and receive several channels of communications, or the functional equivalent of channels, simultaneously along a single medium. Current examples of broadband services are ISDN and xDSL.

The statutory definition also requires for the service to be "high speed" and "high quality." In CIX's view, a service is "high speed" if it is capable of delivering simultaneous voice, data, graphics, and video telecommunications at a rate which is better than current market performance. CIX believes it is critical for the Commission to establish a test for "high speed" that is relative to the existing levels of speed available to the American consumer for data services. One measure of this speed is bandwidth -- the amount of data that can be transmitted in a fixed amount of time. The NOI (at ¶14) suggests that "high speed" could be measured with reference to "facilities with sufficient bandwidth to convey an amount of information in less than a certain amount of time or at a rate greater than a certain specific rate." CIX believes that, while "high speed" could be measured in this way, any attempt to set a fixed, numerical bandwidth

measure would quickly become outpaced by technology. For example, current market levels of quality for today's "high speed" data or video streaming are likely to be far behind market performance in three years from now.

The statutory term "high-quality" connotes that the Commission should properly evaluate the service relative to then-current market standards. Factors to be considered in the qualitative analysis might include, for example, a service which provides more duplex capability, which can serve customers located a great distance from a central office or network point, or which otherwise customizes/enhances the customer's experience of high-speed communications.

The relative standards of "high quality" and "high-speed" suggest that a determination of whether a particular telecommunications service meets the ATC standard is fact-based, and should reflect the technical achievement of the service, the medium employed, and the market addressed by the service.[9] In some cases, a service minimally meeting the ATC standards should not garnish as much deregulatory accommodation as those services which represent vast innovations over current standards, or which apply existing mediums in ways that are truly inventive. As the title of Section 706 suggests, the emphasis should be on "incentives" and, in CIX's view, those incentives should be directed toward innovative services offering much greater opportunities for advanced services

2. Technological Neutrality

The definition of ATC emphasizes that any action taken by the Commission under section 706 must be technologically neutral. The statutory language directs the Commission to

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9 For example, what is a "high speed" may differ as between mobile and wireline telecommunications services, and between residential and business customers. In CIX's view, the proponent of the service requesting some deregulatory action must establish that the service is substantially more "high-speed" than the market currently provides.

evaluate such capabilities "without regard to any transmission media or technology" and "using any technology." § 706(c).

In CIX's view, the statute calls on the Commission and the states to look broadly, at all telecommunications mediums and technologies. The NOI (at para. 56) asks if it is realistic for the numerous companies that assert "they have or soon will have the capability to deploy what appear to be major elements of advanced telecommunications capability and many advanced services" to deploy such technologies competitively. CIX believes that this is more likely to occur if the Commission ensures that advanced telecommunications are able to be deployed in a technologically neutral manner. To ensure neutrality, the Commission should explore regulatory options that encourage a multiplicity of different technologies including satellite, wireless, cable, and other telecommunications offerings. Such neutrality would maximize the impact of regulatory incentives for innovation because ATC is likely to develop in many different media. A variety of different technological offerings will also allow for differing services to meet the various demands for service including business, home, school, rural, and urban users. For example, innovations in satellite and wireless technology may produce competition for rural access to network backbones, as suggested by the NOI (at ¶ 58). On the Internet, CIX members have experienced a competitive evolution of their service offerings as the networks of the Internet have grown and developed over the last several years.

Additionally, CIX believes that statutory emphasis on technical neutrality underscores the broader goal of open networks, as found on the Internet. With more open and competitive telecommunications networks, a variety of providers can deploy service applications that make use of capacity, but are fundamentally independent from the underlying telecommunications. Thus, "advanced" networks are those that are more capable of supporting a range of service offerings from multiple providers.

II. Advanced Telecommunications Capabilities That Serve the Internet Are Being Deployed in a Reasonable and Timely Manner.

Section 706(b) of the 1996 Act requires the Commission to determine if ATC is being deployed in a "reasonable and timely" manner. By giving the market 30 months to develop since the passage of the 1996 Act, it is clear that Congress did not intend for the Commission to act in a precipitous way; rather, this initial Section 706 Inquiry should focus on the pace of technological development. CIX believes that in the time following the Act, progress towards advanced telecommunications capabilities underlying the Internet has occurred and will continue to occur in a "reasonable and timely" manner.[10] An overall proliferation of the Internet, advances in Internet backbone capabilities, and provision of higher speeds to end-users all indicate that rapid and significant advances are being made.

The growth of the Internet provides a vivid example of how a competitive market can itself set deployment schedules, invigorate the pace of progress, and reward the most fit technologies. The successful Internet model reinforces CIX's belief that the Commission should not adopt time-specific schedules or objective targets at this time to encourage the progress towards the deployment of ATC. NOI at ¶ 59. As a practical matter, such time schedules would unduly bias the Commission toward promoting existing technologies that may prove inferior or less commercially viable.

Fueled by consumer demand and a rapidly advancing Internet Service Provider industry, the Internet is experiencing a period of unprecedented growth. The number of Internet hosts that store information, interact, and relay communications increased from 1.3 million in 1993 to 19.5

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10 As discussed below, CIX believes that the local telecommunications market is more problematic because the provisions of the 1996 Act for opening those markets have not yet been significantly realized.

million in 1997. In the last year alone, from July 1997 to July 1998, the number of hosts has almost doubled to 36.7 million.[11] Thousands of ISPs are in business to serve end-users.[12] In the United States alone there are over 28 million Internet users.[13] While traditional circuit-switched telephony continues to move slowly towards open competition, the Internet Service Provider industry has been highly competitive from its inception.

Likewise, Internet backbones are rapidly upgrading to meet network demand resulting from the explosive growth of the Internet while continuing to offer a host of innovative new services. All of the major backbone providers including AT&T, MCI, Sprint, PSINet, UUNET and Qwest are rapidly deploying advanced broadband networks. Several examples sufficiently demonstrate this point.

- Qwest is currently constructing a 16,000 mile network that is scheduled to be completed in the 2nd quarter of 1999, of which currently only 3,500 miles of this are activated.[14] This is obviously a very aggressive growth plan.

- Sprint on September 3, 1997, announced that it would increase bandwidth by 400 percent. Sprint stated that this upgrade "allows Sprint to continue to meet and stay ahead of the increasing traffic demands on its Internet backbone."[15]

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11 Internet Domain Survey, July 1998, Produced by Network Wizards and available on the World Wide Web at <http://www.nw.com/>.

12 See e.g. http://www.cnet.com/Content/Report/Special/ISP/index.html(web-site listing over 2,000 commercial ISPs).

13 <http://www.nua.com/>.

14 http://www.qwest.com/press/12998.html.

15 http://www.sprint.com/sprint/press/releases.

- In October of 1997, AT&T announced that it would offer its Worldnet Internet Service over its own IP backbone, rather than through it previous arrangement where it contracted its Internet services to other providers. [16]

- PSINet acquired the rights to use 10,000 miles of IXC's OC-48 switched network that will be used for its Internet backbone capacity. This network is 50 times faster than the T3 backbone that is dominant today. In a press release announcing this increased capacity PSINet stated, "We aren't dependent on telcos for our network infrastructure: as a result, we can deliver our services in a more timely manner and are less effected by incidents that affect other carriers' networks and business plans."[17] PSINet emphasized that they have the bandwidth necessary to support customers requirements for the foreseeable future.

- UUNET in October of 1997 announced its new service OCDirect. This service is designed to meet the bandwidth requirements for high-capacity users such as Internet service providers, Internet content providers, large corporations, and organizations with large Web sites. UUNET is able to offer this service as a result of a $300 million dollar investment in network infrastructure, which significantly raised the speed of its backbone.[18]

More generally, as one industry expert recently noted, that while three years ago available Internet bandwidth doubled every year, bandwidth today doubles every 4 to 6 months.[19]

High speed Internet access to end users is also growing rapidly. This access is being offered through various technologies including digital subscriber lines, cable, and satellite connections. It is estimated that roughly 10 percent of businesses and 3 percent of all homes currently have high-speed Internet access and that by 2002, about 35 percent of businesses will

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16 http://www.att.com/press.

17 http://www.psi.net/news/pr/98/ixccomplete.html.

18 http://www.us.uu.net/press/oc3.shtml.

19 Statement of Alan Taffel, UUNET Technologies, at Spring Internet World Conference, Los Angeles, March 19, 1998.

have high speed access with about 10 percent of all homes connecting to the Internet through these various technologies.[20]

Likewise CLECs, cable operators, satellite-based service providers, and others are also rapidly deploying capabilities for much improved Internet speeds to the home at affordable prices.

- The @HomeNetwork is deploying Cable Internet services and has affiliate agreements with fifteen leading cable companies in North America including Comcast Corporation and Cox Communications. As of June 30, 1998 after less than two years of commercial availability @Home was serving 147,000 cable subscribers. Most importantly, the base of homes with access to @Homestow way upgraded plant increase to 7.9 million homes.[21]

- Hughes Electronics announced its offering of high speed Internet Access being delivered by Satellite. Hughes Electronics is deploying its DirecPC service that offers Internet service to any American via Satellite at speeds of 400 kbps. This service costs an initial hardware fee for the Satellite of $299 and offers service for a monthly fee as low as $29.99. [22]

- Sprint through its ION Network is offering a service it claims will leap frog the bandwidth capabilities on DSL and cable modems, offering bandwidth on demand.

In addition, significant advances in personal computer technology and server software are making more efficient use of any given telecommunications capacity for Internet services. For example, video telecommunications on the Internet is provided using "streaming" technology. Programs such as Real Video and Real Audio (products of Real Networks Corporation) lead the industry in providing video telecommunications and high quality audio on the Internet.

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20 http://www.news.com/News/Item/0%2C4%2C25885%2C00.html?dd.ne.tx.fs.

21 see http://www.home.com.

22 see http://www.direcpc.com.

Companies using Real Networks to deliver streaming media include ABC, ESPNet SportsZone, AT&T, CBS, MCI, Sony, and Time Life.[23] According to the RealNetworks web site, over 45,000 hours of live content is broadcast weekly and more than 20 million players (i.e., end user programs) have been downloaded. Additionally, on the personal computer side, it is estimated that by the year 2002, "virtually all processors in use will run at 200 MHz and faster, while standard PCs bought at the time will contain chips running at 1GHz to 500 MHz."[24] These advances to improve the speed and quality of Internet communications demonstrate that Internet technologies are adaptive and strive to provide high-quality services to the American consumer without regulatory intervention.

For these reasons, CIX believes that the Commission should find that ATC on the Internet is being deployed in a "reasonable and timely" manner, and that both the quality and variety of offerings on the Internet continues to progress at a significant pace. CIX does not believe it would be appropriate for the Commission to intervene into the dynamic relationship that currently exists between Internet providers; including not placing regulatory structures on aspects of the Internet market such as peering arrangements and the offering of Internet backbone services.

III. Actions to Promote "Reasonable and Timely" Deployment Should Focus on Opening RBOC Network for Data Competitors Deploying ATC.

It is unquestionable that the methods of delivering "advanced telecommunications capability" will change over time. New technologies will replace ones that were once cutting-

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23 see http://www.realnetworks.com.

24 http://www.news.com/News/Item/0%2C4%2C25885%2C00.html?dd.ne.tx.fs. See also, Washington Post, C3 (Sept. 11, 1998) (Gateway Country advertises computer, with monitor and 33 MHz Intel processor, for under $1,300.00).

edge but have since become conventional. In CIX's view, the Commission's essential goal should be to support a competitive market that encourages such a continued investment and development of new technologies. The Commission should attempt to reduce the delay and limit the transaction costs required to introduce superior technologies onto the network, and to prevent market domination of any product that would stifle incentives for investment and innovation. To the extent possible, the Commission should encourage interoperability, standardization, and open protocols and networks. As an example, the non-proprietary protocol of TCP/IP has enabled the Internet to facilitate efficient communications by users across a variety of different interconnected networks.

CIX believes that the Commission should adopt an approach to Section 706 that is modeled after the Internet, in which open networks and protocols allow the rapid introduction of technologies for data, graphics, and video end-user applications. Because the ILECs continue to control 99% of the country's local telecommunications, and the statute inquires into ATC for "all Americans," the Commission's first order of business must be to reform the existing ILEC monopoly access network practices, to clarify the law where necessary, and to mandate a more open local platform for ATC to reach the end user.

CIX certainly applauds the efforts of the ILECs to deploy services with increased telecommunications capabilities such as ISDN and, more recently, xDSL technologies. However, to better serve users' data and telephone needs, the ILEC's access lines and network (whether combined with ISDN, ADSL or other technologies) must be open with competitive safeguards, including unbundling and resale, for robust competition to develop. Relying on the Internet model, the Commission's top priority must be to ensure that each ILEC offers access to its existing network, as well as the UNE components of its ATC services, on a wholesale basis to competing providers. CIX believes this can and should be done through enforcement of the pro-competitive provisions of the 1996 Act, including Sections 251, 252.

Additional Commission actions to further the goals of Section 706 should be evaluated pursuant to the Commission's Section 10 forbearance and Section 253 preemption authority.

A. Opening the ILEC Networks For Competing Providers Should Be The Commission's First Order of Business.

In CIX's view, Congress acted deliberately as it set the Section 706 Inquiry to commence 30 months after passage of 1996 Act. The time frame for the initial inquiry, which is the subject of this proceeding, was set to occur well after the effective date and implementation of the local competition provisions. Thus, it can be reasonably inferred that Congress meant for local competition to be firmly underway in the marketplace by this time. The Section 706(b) admonition that Commission action must "promot[e] competition in the telecommunications market" further emphasizes that competition envisioned by the 1996 Act must be promoted in this proceeding.

However, significant wireline competition is not what is found in the local telecommunications marketplace, largely because the ILECs have held assiduously to their monopoly models of doing business. The ILECs have protested the regulatory changes brought on by the 1996 Act in many ways, including: litigating key provisions of the Act and the Commission's orders; imposing nonfunctional and inefficient collocation requirements; refusing to establish functional access to ADSL services; refusing to pay reciprocal compensation for local traffic to CLECs; and inefficient OSS platforms for competing providers. Collectively, these actions demonstrate the ILECs' overall animous to opening local networks so that end users can decide among different available technologies and applications, as occurs every day on the Internet.

Thus, CIX believes that the Commission's first priority for both Section 706 goals and the local competition provisions is to bring the ILEC networks into full regulatory compliance with the 1996 Act. CIX is encouraged by the proposals made in Part C of the NPRM to provide more efficient and functional collocation obligations, interconnection obligations, and the

unbundling of elements used for data services. Once local competition is in place, CIX believes that the demand for additional high-speed services will drive competitors to offer services with a broad range of ATC for "all Americans." CIX respectfully submits that the Commission's later inquiries on ATC can focus on the relative success of any given technology application of high-speed services. However, at the time of this inquiry, the fundamental premise underpinning the Section 706 goals of competitive ATC -- local competition and an open ILEC network – is lacking. The Commission must remedy that first.

B. Deregulatory Action in Furtherance of Section 706 Should Be Considered in the Context of Section 10 and Section 253 Proceedings.

In CIX's view, any Commission action taken to promote Section 706 goals should be decided in the context of the statutory provisions established by the 1996 Act to implement forbearance and preemption, such as Sections 10 and 253 of the Act. As the Commission recently decided, "section 706(a) does not constitute an independent grant of forbearance authority or of authority to employ other regulating methods."[25] While Section 706(b) provides that the Commission "shall take immediate action" if its ATC inquiry so indicates, the Commission should find, just as it did for Section 706(a), that Section 706(b) "directs the Commission to use the authority in other provisions, including forbearance authority under section 10(a) . . . ." Id. See also id. at ¶ 77 ("we conclude that, in light of the statutory language, the framework of the 1996 Act, its legislative history, and Congress' policy objectives, the most logical interpretation is that section 706 does not constitute an independent grant of authority").

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25 Wireless Advanced Services Order & NPRM, at ¶ 69.

Further efforts to employ Section 706 as a means of avoiding the pro-competitive provisions of the Act, as the ILECs attempted with their ADSL Petitions, should be summarily rejected. Deregulation under the 1996 Act, including actions in furtherance of Section 706(b), should proceed in a specific factual context for relief under the Commission's authority pursuant to Section 10, 253, or other authority. Requests for deregulation in furtherance of Section 706 should also meet the pro-competitive requirements of these other statutory provisions. Compare, 47 U.S.C. § 10(b) (FCC shall weigh the pro-competitive effect of its forbearance actions), with, id. at § 706(b) (FCC shall act in ways that promote "competition in telecommunications").

IV. FCC Should Encourage End User Choice of ISPs

At ¶ 38 of the NOI, the Commission asks what it can and should do to "ensure that customers are free to choose their own ISPs, especially in markets where the in-region incumbent LEC, or an affiliate of it, is the only provider of advanced telecommunications capability . . . ." CIX believes that ensuring ISP choice for the American consumer is a critical goal for the deployment of ATC in this country, and furthers the goals of the Communications Act to deploy new technologies and services to the American public. 47 U.S.C. § 157(a). This is a critical goal because ISPs today introduce and support a wide array of different technologies and end-user applications via the Internet to improve the way Americans live and communicate. If Americans are foreclosed from access to ISPs of their choice, the ATC itself is less meaningful to all end-users. Again, CIX believes that the Internet model (open networks and low barriers to the introduction of new technologies and applications) should be the Commission's benchmark in this proceeding, and that ISP choice is an essential test of that benchmark.

As discussed below, CIX believes that Commission action to preserve ISP choice in today's ILEC dominated environment should take two directions. First, consumers should be able to select the ISP they want, and the ILEC should not be allowed to skew that end-user decision by advantaging its ISP affiliate in the ISP market. Second, to ensure that consumers

have viable choices among ISPs, the market for transport services to the competing ISPs should be open to competition.

A. "ISP Choice" Means that the End-User, and Not the ILEC, Decides Which ISPs Are Successful.

Fundamentally, ISP choice means that a customer can select any ISP offering service within the market and the ILEC, which offers an efficient underlying telecommunications connecting the end-user to the ISP, is indifferent to the customer's choice. As a practical matter, however, ILECs are not indifferent. ILECs and their affiliates are also active in the ISP business, and their incentives to offer telecommunications services ("wholesale incentives") often conflict with their incentives to sell an integrated package of telecommunications and ISP service ("retail incentives"). In CIX's view, the Commission must ensure that the ISP-affiliate is not advantaged in the ISP market due to the ILEC's market power.

CIX recommends that the Commission take actions to improve real ISP choice for consumers. For example, the ILEC should not force or "steer" customers to the affiliated ISP in the ILEC's marketing or ordering processes for the underlying telecommunications. Rather, ILECs should inform customers in a straightforward manner of the available ISP options. In addition, the ILEC should not be permitted to use a customer's CPNI derived from telecommunications (such as the purchase of a second line) to advantage its ISP-affiliate. Alternatively, if such CPNI is shared between the ILEC and its affiliated ISP, then all ISPs should have access to such CPNI. ISP choice is also reflected in the Computer III principles requiring ILECs to provide ISPs with equal pricing, terms, conditions to the same underlying telecommunications as the ILEC-affiliated ISP. To provide customers with a multitude of ISP choices, the ILEC should also give all ISPs advanced and accurate notification, of its plans for rollout of ATC in each central office (e.g., posting to ILEC web-page) so that all ISPs can prepare to offer meaningful choices to consumers. These suggestions, while not exhaustive, can improve viable ISP choice for consumers.

B. "ISP Choice" Also Requires A Competitive Market for Underlying Telecommunications to ISPs.

ISP choice is also dependent on the emergence of a competitive market for "efficient and competitively priced local transport services." NOI, at ¶ 38. Without efficient and competitive services connecting the end-user to the ISP, the ILEC-affiliate ISP stands to dominate the market to the detriment of consumer choice among a variety of competing ISPs. By contrast, with competitive telecommunications inputs, the market of independent ISPs can sustain an array of ISP service alternatives not provided by the ILEC ISP.

To date, the ILEC DSL tariffs have raised significant concerns that efficient and competitive local area transport to ISPs will emerge unless the Commission and the states actively enforce the ILECs' interconnection and unbundling obligations. As CIX and others have explained, the Commission can promote efficient services in two ways. First, the Commission can clarify and enforce the obligation of ILECs to interconnect their networks, including xDSL services, with requesting data CLEC providers. In this way, CLECs that also offer ISP service can avoid the inefficiencies associated with the ILECs' ATM or Frame Relay transport services. In addition, the Commission should clarify that CLECs may function as data competitive access providers, pursuant to Expanded Interconnection. ISPs could then choose among competing transport carriers to gain access to the ILEC offices and, ultimately, to end-users. Both of these measures could deter the ILEC from engaging in a "price squeeze" between its DSL service and ATM service, could improve the viability of a competitive ISP industry as ATC is deployed, and would avoid unnecessary regulation of the ISP industry.

CIX is encouraged by the Wireless Advanced Services Order and NPRM (¶¶ 18-20) and the GTE ODI[26] because they begin to articulate the mandate for ILECs' advanced networks to interconnect with CLEC networks, which CIX hopes will lead to competitive transport options for ISPs.[27] By providing ISPs with the ability to obtain efficient local telecommunications inputs, the American consumer can continue to enjoy a wide range of competitive choices among ISPs.

V. Universal Service Concerns Can Be Assessed Only After Local Markets Are Open to Competition.

CIX recognizes that the promotion of advanced telecommunications capability can raise universal service fund issues. The subject of "advanced services" to all Americans is clearly raised as a Universal Service Fund policy principle, 47 U.S.C. § 254(b)(2), and it resonates in the language of Section 706 (" . . . advanced telecommunications capability to all Americans . . . "). Moreover, both the language of Section 254 and Section 706 highlight the promotion of ATC or advanced services for "schools and classrooms."

CIX believes that the issues arising from federal or state subsidies to promote ATC or advanced services are properly considered in the context of the Section 254 process, and not in the context of a Section 706 action. As an initial matter, it is doubtful that Section 706 authorizes the Commission to engage in universal service subsidies unless it acts pursuant to the

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26 GTE Telephone Operators, GTOC Tariff No. 1, Order Designating Issues for Investigation, CC Dkt. No. 98-70 (CCB, Aug. 9, 1998).

27 As presented in its Computer III Further Notice comments, CIX also believes that effective reform of ONA obligations should provide ISPs with rights to UNEs, including unbundled loops. See attached Reply Comments of CIX, CC Dkt. Nos. 95-20, 98-10 (filed April 23, 1998).

authority of Section 254.[28] Further, in the Universal Service order, the Commission decided not to include higher-speed services among the list of services generally supported by the high-cost, rural fund.[29] The federal-state joint board should be given full opportunity to review its decision as to what is "universal service" consistent with the statutory standard of an "evolving level of telecommunictions services." 47 U.S.C. § 254(c)(1).

Moreover, CIX believes that universal service support for advanced telecommunications capability should be evaluated only after the local telecommunications market is subject to full competition and competing technologies, such as wireless data and satellite, have had a full opportunity to deploy in the market. At that time, the states and the Commission can better evaluate what USF funding is necessary and targeted. By contrast, funding advanced telecommunications service subsidies in rural and high cost areas today is likely to benefit only the ILECs, and result in decisions which conflict with the Section 706 goals of local competition and technological neutrality.

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28 See Wireline Advanced Services Order and NPRM, at ¶ 77.

29 Report and Order, CC Dkt. No. 96-45, 12 FCC Rcd. 8776, ¶ 83 (1997).

Conclusion

In this proceeding, CIX urges the Commission to lay the framework for the deployment of ATC by opening the ILEC networks for competition among data providers.

Respectfully submitted,

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September 14, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-20
Computer III Further Remand	)	
Proceedings: Bell Operating	)	
Company Provision of Enhanced	)	
Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

REPLY COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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